

CONGRESSIONAL RECORD SUMMARY

Wednesday, May 22, 2002

SENATE

Measures Introduced:

S. 2538. *A bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; read the first time.*

Kennedy

Page S 4702

S. 2539. *A bill to prohibit the use of taxpayer funds to advocate a position that is inconsistent with existing Supreme Court precedent with respect to the Second amendment; to the Committee on the Judiciary.*

"...This legislation responds to the Bush Administration's recent filing of two unprecedented briefs to the United States Supreme Court, which argued that the Second Amendment establishes an individual right to possess firearms. In taking this position, the Justice Department directly contradicted the well-established precedents of the Supreme Court, as expressed in the seminal case of United States v. Miller. In that 1939 case, the Supreme Court found that the Second Amendment did not establish a private right of individuals to possess firearms, but rather was intended to ensure the effectiveness of groups of citizen- soldiers known at the time as the Militia..."

Corzine

Pages S 4702, S 4705-06

S. 2541. *A bill to amend title 18, United States Code, to establish penalties for aggravated identity theft, and for other purposes; to the Committee on the Judiciary.*

Feinstein

Pages S 4702, S 4707-09

S. 2546. *A bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes; to the Committee on Armed Services.*

*"...I rise today to express my disappointment in the decision announced yesterday by the Department of Transportation against allowing airline pilots to carry firearms during the performance of their duties. Today I am introducing legislation which would overturn that decision and require the Transportation Security Administration to establish a program to permit pilots to defend their aircraft against acts of criminal violence or air piracy. This legislation will provide a critical last line of defense to secure commercial aircraft. This bill I am introducing today is identical to a bill in the House of Representatives, **H.R. 4635**, introduced by Mr. Young of Alaska and Mr. Mica of Florida..."*

Thurmond

Pages S 4702, S 4716

S. 2551. *An original bill making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes; from the Committee on Appropriations; placed on the calendar.*

Byrd

Page S 4703

Measure Reported:

S. 2551, *making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002.*

Pages S 4701-02, D 527

H.R. 3009 - Andean Trade Preference Expansion Act:

Senate continued consideration of H.R. 3009, to extend the Andean Trade Preference Act, and to grant additional trade benefits under that Act, taking action on the following amendments proposed thereto:

Pages S 4662-85, S 4688-94, D 527

Pending:

Baucus/Grassley Amendment No. 3401, in the nature of a substitute.

Pages S 4662-85, S 4688-94, D 528

Reid (for Byrd) Amendment No. 3447 (to Amendment No. 3401), to amend the provisions relating to the Congressional Oversight Group.

Pages S 4662, S 4688-90, S 4692, D 528

Reid (for Byrd) Amendment No. 3448 (to Amendment No. 3401), to clarify the procedures for procedural disapproval resolutions.

Pages S 4662, S 4690-91, D 528

Reid (for Byrd) Amendment No. 3449 (to Amendment No. 3401), to clarify the procedures for extension disapproval resolutions.

Pages S 4662, S 4690-91, D 528

Reid (for Corzine) Amendment No. 3461 (to Amendment No. 3401), to help ensure that trade agreements protect national security, social security, and other significant public services.

Pages S 4662, D 528

Reid (for Corzine) Amendment No. 3462 (to Amendment No. 3401), to strike the section dealing with border search authority for certain contraband in outbound mail.

Pages S 4662, D 528

Reid (for Hollings) Amendment No. 3465 (to Amendment No. 3401), to provide that the benefits provided under any preferential tariff program, excluding the North American Free Trade Agreement, shall not apply to any product of a country that fails to comply within 30 days with a United States government request for the extradition of an individual for trial in the United States if that individual has been indicted by a Federal grand jury for a crime involving a violation of the Controlled Substances Act.

Pages S 4662, D 528-29

Wellstone Amendment No. 3467 (to Amendment No. 3401), to protect human rights and democracy.

Pages S 4676-78, S 4681-82, D 529

During consideration of this measure today, Senate also took the following actions:

By 68 yeas to 29 nays (Vote No. 122), three-fifths of those Senators duly chosen and sworn having voted in the affirmative, Senate agreed to the motion to close further debate on *Baucus/Grassley Amendment No. 3401*, listed above.

Pages S 4668, D 529

A unanimous-consent agreement was reached providing for further consideration of the bill at 10:30 a.m., on Thursday, May 23, 2002, with a vote on the motion to close further debate on the bill.

Pages S 4737, D 529

Nominations Received:

Senate received the following nominations:

Jay S. Bybee, of Nevada, to be United States Circuit Judge for the Ninth Circuit.

Timothy J. Corrigan, of Florida, to be United States District Judge for the Middle District of Florida.

James C. Dever III, of North Carolina, to be United States District Judge for the Eastern District of North Carolina.

Pages S 4737-39, D 529

Committee Meetings:

Committee on Appropriations: *Committee ordered favorably reported an original bill (S. 2551) making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002.*

Page D 529

Committee on Governmental Affairs: *Committee ordered favorably reported the following business items: S. 2452, to establish the Department of National Homeland Security and the National Office for Combating Terrorism, with amendments; and the nominations of Todd Walther Dillard, of Maryland, to be United States Marshal for the Superior Court of the District of Columbia; Paul A. Quander, Jr., to be Director of the District of Columbia Offender Supervision, Defender, and Courts Services Agency, and Robert R. Rigsby, to be an Associate Judge of the Superior Court of the District of Columbia. Also, committee approved the issuance of subpoenas to the Executive Office of the President and the Office of the Vice President in connection with the Committee's investigation regarding Enron Corporation.*

Pages D 530-31

Committee on Indian Affairs: *Committee concluded hearings on S. 1340, to amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands.*

Committee on the Judiciary: *Subcommittee on Crime and Drugs concluded hearings to examine laws governing Federal cocaine sentencing, focusing on the disparity between penalties for both powder cocaine and crack cocaine, after receiving testimony from Diana E. Murphy, Judge, Eighth Circuit Court of Appeals, on behalf of the United States Sentencing Commission; Roscoe C. Howard, Jr., United States Attorney for the District of Columbia, Department of Justice; Charles J. Hynes, Kings County District Attorney, Brooklyn, New York; Charles R. Schuster, Wayne State University School of Medicine, Detroit, Michigan, former Director, National Institute on Drug Abuse, National Institutes of Health, Department of Health and Human Services; and William G. Otis, George Mason University School of Law, Arlington, Virginia, former White House Special Counsel and former Assistant United States Attorney for the Eastern District of Virginia.*

Page D 531

Committee Meetings for Thursday, May 23, 2002:

Committee on Governmental Affairs: @ 2:30 p.m. to hold hearings to examine voting representation in Congress for the citizens of the District of Columbia. SD-342.

Committee on the Judiciary: @ 10:00 a.m. *Business meeting to consider S. 1868, to establish a national center on volunteer and provider screening to reduce sexual and other abuse of children, the elderly, and individuals with disabilities; S. 1956, to combat terrorism and defend the Nation against terrorist attacks; S. 1989, to authorize the establishment of a National Cyber Security Defense Team for purposes of protecting the infrastructure of the Internet from terrorist attack; the nomination of D. Brooks Smith, of Pennsylvania, to be United States Circuit Judge for the Third Circuit; the nomination of Roslynn R. Mauskopf, to be United States Attorney for the Eastern District of New York; the nomination of Steven D. Deatherage, to be United States Marshal for the Central District of Illinois; the nomination of Thomas M. Fitzgerald, to be United States Marshal for the Western District of Pennsylvania; the nomination of G. Wayne Pike, to be United States Marshal for the Western District of Virginia; and the nomination of David William Thomas, to be United States Marshal for the District of Delaware. SD-226.*

Committee on the Judiciary: 2:00 p.m. *To hold hearings to examine pending judicial nominations. SD-226.*

Page D 535

HOUSE

Bills Introduced:

H.R. 4789. A bill to amend the Internal Revenue Code of 1986 to repeal the 1993 increase in taxes on Social Security benefits; to the Committee on Ways and Means.

Paul

Page H 2943

H.R. 4790. A bill to amend the Internal Revenue Code of 1986 to repeal the inclusion in gross income of Social Security benefits; to the Committee on Ways and Means.

Paul

Page H 2943

H.R. 4801. A bill to amend the Internal Revenue Code of 1986 to provide a 100 percent deduction for the health insurance costs of individuals; to the Committee on Ways and Means.

Chabot

Page H 2943

H.R. 4816. A bill *to assign liability for injury caused by genetically engineered organisms*; to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

Kucinich

Page H 2944

H.R. 3448. Bioterrorism Preparedness Act:

The House agreed to the conference report on H.R. 3448, to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies by a ye-a-and-nay vote of 425 yeas to 1 nays, Roll No. 189.

Pages H 2844-60, D 532

H. Res. 427, the rule that waived points of order against the conference report was agreed to by a ye-a-and-nay vote of 403 yeas to 19 nays, Roll No. 186.

Pages H 2838-42, D 532

H.R. 3129. Customs Border Security Act:

The House passed H.R. 3129, to authorize appropriations for fiscal years 2002 and 2003 for the United States Customs Service for antiterrorism, drug interdiction, and other operations, for the Office of the United States Trade Representative, for the United States International Trade Commission by a recorded vote of 327 yeas to 101 nays, Roll No. 193. Agreed to amend the title so as to read: "A bill to authorize appropriations for fiscal years 2002 through 2004 for the United States Customs Service for antiterrorism, drug interdiction, and other operations, for the Office of the United States Trade Representative, for the United States International Trade Commission, and for other purposes."

Pages H 2861-91, D 532

*"... But the rationale of the border exception does not allow customs searches of outgoing mail without a warrant. Section 144 would allow customs officials to open mail with reasonable cause, which is a much lower standard than probable cause and would eliminate the need for **judicial review**. The United States Post Office believes that this is an unreasonable provision. They have written in support of the provision which I have mentioned would be in the substitute where we just strike the provision that gives the Customs Service the power to open mail just because they think it is reasonable but they do not have probable cause to do it..." (Rangel, page H 2862)*

H.R. 3129. Customs Border Security Act (Cont'd):

"... So in looking at the bill itself, I do hope Members appreciate the broad support that the underlying bill has, and that although the substitute focuses on a couple of areas that will be addressed beyond the immunity question, if we are going to allow a true examination of the ways in which we can protect this country, under a search warrant, it seems entirely appropriate that based upon sufficient suspicion you ought to be able to read a piece of outbound mail. Under the courts of this country, you would only be allowed to then take a look at what the content of the mail was. But it seems to me if you can have the ability to deal with it with inbound mail, you certainly ought to, with full court protection, have the ability to look at it in terms of outbound mail as well..." (Thomas, pages H 2862-3)

"... My bill would provide Customs with new, necessary search tools in light of America's new security needs while balancing the need for privacy. The Rangel substitute guts some key provisions. By striking the outbound mail provision, the Rangel substitute allows continued money- laundering to occur. The Rangel immunity provision leaves the Federal Government open to a new class of torts. My bill protects only those inspectors who act in good faith. Under my bill the government can be sued under the Federal Torts Claims Act..." (Crane, page H 2889)

Pursuant to the rule, **the Committee on Ways and Means amendment** in the nature of a substitute now printed in the bill (H. Rept. 107-320) was considered as an original bill for the purpose of amendment.

Pages H 2869, D 532

Agreed to the Crane amendment in the nature of a substitute no. 1 and printed in H. Rept. 107-482 that increases agency authorization funding levels including earmark for resources at Northern Border at Section 13; deletes Sections 121 through 125 concerning customs officer pay changes; changes customs fees for couriers to a fixed fee structure; provides monthly billing to importers and prohibits duty deferrals; clarifies that the advanced electronic manifest requirement applies only to inbound cargo and; **requires sharing of information collected by customs to other government agencies.**

Pages H 2873-8, D 532

Rejected the Waters amendment in the nature of a substitute no. 2 and printed in H. Rept. 107-482 that amends Section 141 and states that Customs inspectors are not liable for civil damages for suits brought in connection with a personal search and deletes section 144 on border search authority for outbound mail by a recorded vote of 197 ayes to 231 noes, Roll No. 192.

Pages H 2878-90, D 532

"... Section 141 of H.R. 3129 is problematic because it offers full immunity from civil damages if a customs officer performed the search in so-called good faith. Since the bill does not define what constitutes good faith, it effectively expands the current immunity standard to the point of making it nearly impossible for a person to seek redress against a customs officer for an unconstitutional search. Under current law, government officers performing their specified functions are afforded qualified immunity from civil damages as long as the officer's actions do not violate clearly established statutory or constitutional rights which a reasonable person would have known. The Fourth Circuit Court of Appeals said in 1992 that officers "are not liable for bad guesses in gray areas, they are liable for transgressing bright lines." That is the current law. The availability of qualified immunity is determined against a standard of objective reasonableness. Whether an officer may be held personally liable turns on the objective legal reasonableness of the action assessed in light of the legal rules that were clearly established at the time the action was taken. As the Supreme Court said in 1986, the present qualified immunity protects "all but the plainly incompetent and those who knowingly violate the law." But this bill seeks to go further and extends the immunity to situations where customs officers allege that they were acting in good faith, regardless of whether they were transgressing a bright line in the law or not, and regardless of whether they should have known that their actions violated the law. Under this bill, a customs officer could engage in blatantly discriminatory conduct; but if he believed it was in good faith, then he could not be held liable..." (Lewis, page H 2864)

H.R. 3129. Customs Border Security Act (Cont'd):

H. Res. 426, the rule that provided for consideration of the bill was agreed to by a yea-and-nay vote of 386 yeas to 32 nays, Roll No. 188.

Pages H 2842-4, D 532

H.R. 4775. Supplemental Appropriations:

The House completed general debate and began considering amendments under the five-minute rule on H.R. 4775, making supplemental appropriations for the fiscal year ending September 30, 2002. Consideration of the bill will resume on Thursday, May 23.

Pages H 2902-26, D 532

"...The bill includes \$112 million for the FBI, which is \$102 million above the request of the administration; but it will help the FBI do what they have to do. The recommendation also includes \$10 million for the foreign terrorist tracking task force, a multiagency effort to prevent terrorists from coming into the country. We certainly need that as quickly as possible. \$75 million is recommended for the INS, \$40 million above the request. Again the administration was low in its request. You cannot complain about the INS and then not fund its necessary programs, including \$49 million to address the shortfall in the immigration inspection account; \$25 million to bolster efforts to track and apprehend people who have absconded on deportation orders; and \$1 million to continue development of an entry-exit system. The bill also has \$175 million for the Justice Department for State and local first responder equipment, training and planning needs. This funding is provided to the Department of Justice as authorized by the USA Patriot instead of being provided to FEMA as requested..." (Wolf, page H 2910)

Pursuant to the rule the amendments printed in H. Rept. 107-484 that provide statutory assurance that the United States Government will take all steps necessary to guarantee the full faith and credit of the Government; provide for Medicare reimbursement adjustments, clarifies fabric origin requirements for regional trade preference agreements, and ensures that the conference can permit the Postal Service to continue to use the bypass mail system in Alaska on mainline routes and in the Alaskan bush country were considered as adopted. A point of order was sustained against Section 101, page 4, lines 17-23.

Pages H 2914, D 532

Rejected the Obey motion to rise by a recorded vote of 134 yeas to 250 noes, Roll No. 196.

Pages H 2914-15, D 532

H. Res. 428, the rule that provided for consideration of the bill was agreed to by a yea-and-nay vote of 216 yeas to 9 nays with 3 voting "present," Roll No. 194.

Pages H 2891-H 2902, D 532

Memorial:

266. Also, a memorial of the Legislature of the State of Idaho, relative to Senate Joint Memorial 110 memorializing the United States Congress to authorize an additional United States District Court Judge and commensurate staff for the District of Idaho to assist in handling current and anticipated caseloads in the District of Idaho; to the Committee on the Judiciary.

Page H 2945

Committee Meetings:

Committee on the Judiciary: Subcommittee on Courts, the Internet, and Intellectual Property held an oversight hearing on *"The Accuracy and Integrity of the WHOIS DATABASE."*

Committee on Resources: Ordered reported the following measures: **H. Con. Res. 395, amended**, celebrating the 50th anniversary of the constitution of the Commonwealth of Puerto Rico; **H.R. 521, amended**, to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam.

Page D 533

Committee on Transportation and Infrastructure: Ordered reported the following: **H.R. 3429**, Over-the-Road Bus Security and Safety Act of 2001; **H.R. 3609**, amended, Pipeline Infrastructure Protection To Enhance Security and Safety Act; and **H.R. 4770, amended, Ronald C. Sheffield Federal Property Protection Act of 2002**. *The Committee also approved the following: several public building 11 (b) resolutions.*

Conferees met to resolve the differences between the Senate and House passed versions of H.R. 333, to amend title 11, United States Code, but did not complete action thereon, and recessed subject to call.

Page D 534

Committee Meeting For Thursday, May 23, 2002:

Committee on Financial Services, @ 9:30 a.m. Subcommittee on Oversight and Investigations, hearing entitled *"One Broker Gone Bad: Punishing the Criminal, Making Victims Whole."* 2128 Rayburn.

Page D 535

Remark:

Independent Commission Needed To Determine Facts.

*"... The Bush administration is in a quandary which is, as Washington quandaries so often are, partly self-inflicted. There is only one way out of the growing--tardily growing; by no means grown too large--controversy about investigating intelligence inadequacies prior to Sept. 11. The way out for the administration is to go through an investigation, and not one conducted by itself. Eleven days. **That is how long it took President Roosevelt after Pearl Harbor to appoint a blue-ribbon commission, headed by Supreme Court Justice Owen Roberts, to examine what was known, and what should have been, prior to Dec. 7, 1941.** More than 250 days have passed since Sept. 11. Last week, one of the most dispiriting in recent Washington history, the administration seemed surly and defensive regarding the inevitably rising tide of questions about governmental intelligence operations before the terrorist attacks..."* (From the Washington Post article, *The Way Out*, by George F. Will, submitted to the record by Mr. Miller)

Miller

Pages H 2926-9

Next SENATE MEETING: Thursday, 9:30 a.m., May 23, 2002.

Next HOUSE MEETING: Thursday, 10:00 a.m., May 23, 2002.

OLA: S. Schwarz, A. Santos